that the defendant will succeed if he proves that the injury was caused solely or in part by the omission of the plaintiff to take the ordinary care that would be expected of him in the circumstances.

But having come to that conclusion I am of opinion that the care to be expected of the plaintiff in the circumstances will vary with the circumstances; and that a different degree of care may well be expected from a workman in a factory or a mine from that which might be taken by an ordinary man not exposed continually to the noise, strain and manifold risks of factory or mine."

It was also decided in that case that a man ought not to be regarded as negligent in respect of every careless act which he may do when working in a factory.

The question of contributory negligence does not depend upon any breach of duty as between plaintiff and defendant. As the Judicial Committee stated in *Nance* v. *British Columbia Electric Railway Company Ltd.*,(2) (*per* Lord Simon) —

".....all that is necessary to establish such a defence is to prove to the satisfaction of the jury that the injured party did not in his own interest take reasonable care of himself and contributed, by this want of care, to his own injury. For when contributory negligence is set up as a shield against the obligation to satisfy the whole of the plaintiff's claim, the principle involved is that, where a man is part author of his own injury, he cannot call on the other party to compensate him in full."

Like an eminent English judge, I do not propose to "expound theories of causation, with or without the aid of Latin maxims". I will apply the test in *Nance's* case and simply ask the question: Having regard to the circumstances of the case was the accident partly the fault of the plaintiff? The plaintiff was an inexperienced worker and the working of the machine would require close coordination between his leg and his hands. The job he was performing was routine and could be monotonous in the environs in which he was working. Like an inexperienced motor car driver he was as likely to step on the accelerator when he meant to apply the brakes. Under those circumstances it could not be said that he failed to take reasonable care of himself or that the carelessness or inadvertence on his part amounted to contributory negligence. There must be something more than that.

On the question of damages the findings of Mr. Gawne that, to all intents and purposes, the left hand is completely useless, has not been discredited. The loss of this hand would be a severe loss of amenities and would affect his future earnings. It is true that the defendant has offered to take the plaintiff back in the employment but that, to my mind, would in no way detract from the position that the loss of the hand is a severe loss of future earning capacity. In dealing with the question of general damages, therefore, I took into account the pain and suffering, the embarrassment, loss of amenities and loss of future earnings consequent upon the loss of the left hand. Having regard to the trend of awards in cases where a hand had been amputated and having regard also to the age of the plaintiff, I assess and I do hereby award $43,000 as general damages which includes $15,000 for loss of future earnings. The special damages has been agreed at $450. The defendants shall also pay the cost of the plaintiff as taxed by a proper officer of the court.

Order accordingly.

Solicitors: *Kam Woon Wah & Co.; Murphy & Dunbar.*

NG KAY THONG v. CHEE SHAN SHONG

[O.C.J. (Abdul Aziz J.) January 13, 1966]
[K.L. — Civil Suit No. 758 of 1964]

Negligence — Balance of probabilities — Quantum of damages — Loss of arm.

Damages — Left arm — Amputation of.

The plaintiff sustained injuries in a traffic accident. He alleged that he was knocked down by a car. Evidence was called to show that it was the defendant's car which was involved in the accident. The defendant denied that his car was involved in the accident. The plaintiff who was 42 years old and a bill collector sustained injuries as a result of which his left arm had to be amputated.

Held: (1) on the balance of probabilities it was the defendant's car which was involved in the accident and the accident was caused by the defendant's negligence in driving the said car;

(2) in the circumstances of this case and having regard to the current trend of awards in similar cases, the general damages in this case would be fixed at $22,500.

Cases referred to:—

(1) *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.* [1962] M.L.J. 29.

(2) *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.* [1964] M.L.J. 463.

(3) *I.R.K. Tandon* v. *Ng Siok Kwee & Anor.* [1964] M.L.J. xlv.

CIVIL SUIT.

H. E. Cashin for the plaintiff.

N. Marjoribanks for the defendant.

Abdul Aziz J.: This is an action for damages for injuries sustained in an alleged traffic accident which occurred on the 31st December 1963 at Jalan Kolam Ayer, Kuala Lumpur, which is a small lane branching off from another small lane passing through a new village.

There are two issues: Firstly, whether there was this traffic accident as alleged by the plaintiff which caused the injuries to the left elbow and arm, and secondly, if there was negligence on the part of the defendant, the quantum of damages.

The plaintiff's case was that on the day in question at about 6.30 to 7 p.m. he was returning

to his house at Jalan Kolam Ayer and was walking down the lane on the right hand side when a car came round the bend and as it was proceeding down the lane in the same direction as he was walking, the car brushed past him so close that the triangular glass wind deflector on the driver's side came in contact with his left arm causing a fracture of the arm. He fell down and was later taken to hospital where it was found that he had a compound fracture and dislocation of the left elbow and severe crush injury of the soft tissues of that hand. Gangrene complicated the injuries and therefore an emergency and later a formal above elbow amputation of that limb was done. He was discharged from hospital on the 20th February 1964. The plaintiff could not identify the car nor the driver of the car responsible for the accident. The plaintiff called two youths who testified that they saw a car hit the plaintiff at about that time. They could identify the car and the driver as someone who was living in the same village. There was other evidence tending to show that it was the defendant's car which was involved in the accident. The defendant himself admitted that he was driving his car at the time of the accident but denied that his car was involved in any accident. Having heard the evidence and seen the witnesses I find that, on the balance of probabilities, it was the defendant's car which was involved in the accident on that day and that the accident was caused solely by the defendant's negligence in driving the said car.

As regards damages, special damages of $602.75 had been admitted and the plaintiff has abandoned damages for loss of past earnings and potential future earnings. There is, therefore, only one question for consideration and that is as regards the quantum of damages for loss of the left arm. Generally an arm is worth more than a leg and this is borne out in *Kemp and Kemp* on Quantum of Damages, page 465, article 247, and the First Schedule, the Workmen's Compensation Ordinance 1952 where the legislators have fixed a higher percentage of loss of earning capacity for an arm than for a leg. The plaintiff was 42 years old at the time of the accident and married and was working for his brother who was the proprietor of a construction company in the capacity of bill collector, rent collector and sub-contractor. The plaintiff was in hospital for nearly two months during which he had to undergo two major operations. He must have suffered considerable pain and suffering as a result thereof. The plaintiff said that after he was discharged from hospital he had an artificial arm fitted but he found that it had no utility value. With or without the artificial arm the loss of this arm will be a permanent source of embarrassment to him and he will be considerably handicapped in the normal enjoyment of his life. On the other hand his means of livelihood is not likely to be seriously affected through the loss of the arm. Taking all these factors into account and paying heed to the current trend of considered opinion and awards in somewhat similar cases I assess general damages at $22,500. In assessing general damages I had in mind the decision and award in *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.*,[1] the Privy Council decision in *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.*,[2] and the decision of Gill J. in *I. R. K. Tandon* v. *Ng Siok Kwee & Anor.*[3] I have taken note of the fact that in all these cases the plaintiffs were relatively young. I have, therefore, made adjustments accordingly.

As a result there will be judgment for the plaintiff for the sum of $23,102.75, interest under section 11 at 5% and costs to be taxed by a proper officer of the court.

Order accordingly.

Solicitors: *Murphy & Dunbar; Lovelace & Hastings.*

HIN SENG & CO. v. SEAC CO.

[O.C.J. (Ambrose J.) January 14, 1966]

[Singapore — Originating Motion No. 13 of 1965]

Landlord and Tenant — Subletting — Rent — Application to Rent Conciliation Board to apportion rent of premises sublet by tenant — Whether standard rent of such sublet premises relevant — Control of Rent Ordinance (Cap. 242), ss. 9(1), 11, 13 and 22.

The respondents were the tenants of premises at Philip Street, Singapore, at the rent of $137.50 per month and they sublet a room to the applicants at a rent of $190 inclusive of municipal charges commencing from 16th September, 1955. The applicants applied to the Rent Conciliation Board to determine the rent of the sublet room and on July 3, 1962, the Board fixed the rent of $35 inclusive of municipal charges. The sublet room had been separately let for the first time on the 16th September, 1955, and the respondents applied to the Rent Conciliation Board to vary the order made by them on the ground that the standard rent of the sublet room was $190 a month and the rent must therefore be restored to that figure. The Board purported to act under section 11(6) of the Control of Rent Ordinance and taking the view that their previous order was made in consequence of a mistake they restored the rent of the room to the figure of $190 a month. The applicants therefore made an application under section 13(1) of the Control of Rent Ordinance to the High Court.

Held: the original order of the Rent Conciliation Board was correctly made and the Board had no jurisdiction to vary the order. The rent of the sublet room had to be determined by apportionment and the rent at which the room was first let separately was irrelevant.

Case referred to:—

(1) *Harwood & Anor.* v. *Perreau* [1955] M.L.J. 56.

ORIGINATING MOTION.

S. K. Lee for the applicants.

C. F. J. Ess for the respondents.